

Enforcement and Compliance Assurance Core Program**TABLE OF CONTENTS**

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1. INTRODUCTION TO CORE PROGRAM

OECA is committed to the concept that maintaining a viable core compliance and enforcement program is necessary to achieve a strong and credible enforcement presence to deter non-compliance. All Regional programs should adhere to the guidelines and expectations described in this Core program guidance.

While this guidance is used primarily to develop the regional MOAs, it also is used to initiate discussions with states about the use of program grant funds and work planning for FY 2002 and 2003. We expect these discussions will include a review of EPA and state priorities, with the goal of developing the best combination of those priorities. OECA believes that issues raised by states about the regional/state phase of the planning process need to be examined through an effort that OECA will convene in the near future.

A. Exceptions to the Core

In the FY 2002/2003 MOA submission, regions need only report exceptions to the core program activities and expectations described in this guidance. Regions may make tradeoffs within the core, either within or across media programs. In its discussion of the core program, the region should identify, by media or program area, any changes or tradeoffs to the core program and provide an explanation. In completing this section of the MOA, the region should explicitly consider:

- whether its level of compliance assurance or enforcement activity is likely to dramatically change in any media;
- whether it will meet national guidance on timely and appropriate responses in all media;
- whether there are data input/timeliness problems with a particular data system;
- whether there are changes to its compliance monitoring program, e.g. to reflect a shift to conduct more resource intensive investigations rather than routine inspections; and
- whether the region will meet expectations set forth in the program specific descriptions which follow later in the document.

B. Cross-Program Core Activities

Basic core program components apply across most of the specific program write-ups included in this guidance. These components include the following specific activities:

- follow the applicable program enforcement response policies (ERPs) and timely and appropriate (T&A) guidance (where these exist);
- follow OECA Nationally Significant Issues (NSI) guidance in all cases as applicable;
- promote OECA's compliance incentive policies (e.g., small business policy, audit policy), with the assistance of state/local agencies, to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response.
- consider and follow-up on, as appropriate, self-disclosures submitted under the OECA audit policy and small business policy;
- track compliance with consent decrees and with administrative orders and take all necessary

- actions to ensure continued compliance;
- insure that all required data is input into the national databases, where applicable, and complete and enter the case conclusion data sheets for all concluded actions; and
- reduce the backlog of administrative cases (i.e. settle or litigate cases issued in years prior to FY 2002, and ensure investigation and issuance of appropriate action for any open tips/complaints/referrals received by EPA in years prior to FY 2002), and work with the Department of Justice and Headquarters to develop, file, prosecute, and settle outstanding judicial actions.

C. Compliance Monitoring

All Regional programs should conduct appropriate compliance monitoring activities which include conducting compliance inspections and investigations, record reviews, targeting and responding to citizen complaints.

The core compliance monitoring program is defined by a number of specific activities. Compliance monitoring is comprised of all the activities conducted by a regulatory agency to determine whether an individual facility or a group of facilities (geographical, by sector or by corporate structure) are in compliance with environmental laws and regulations, as well as established settlement agreements (e.g., Administrative Orders, Consent Decrees, etc). Compliance determinations are generally documented and filed using various methods (e.g., database, inspection report, etc.). Compliance monitoring activities occur before and at the point when either compliance or an actual violation is determined.

Examples of important compliance monitoring activities include:

- creating a viable field presence and deterrent by conducting compliance inspections, surveillance, and civil investigations in all the environmental media (air, water, waste, toxics, wetlands, etc.) in both delegated and non-delegated programs;
- performing compliance data collection, analysis, evaluation and management;
- developing compliance monitoring strategies that include targeting and information gathering techniques;
- collecting and analyzing environmental samples at specific facilities and sites, and ambient locations;
- reviewing and evaluating self-reported reports and records, environmental permits and other technical information relating to compliance with environmental laws and regulations;
- maintaining compliance files and managing compliance records;
- responding to tips, complaints, and referrals from private citizens, other governmental entities, and non-governmental organizations;
- providing training to fulfill the requirements of EPA Order 3500.1, and other applicable Orders (1440.1, 1440.2, etc.);
- preparing reports and inputting compliance findings/inspection results into national databases;
- analyzing and evaluating the outcomes of compliance monitoring activities;
- working with state, tribal, and local environmental regulatory agencies to monitor environmental compliance with environmental laws by private, state, Federal, and tribal facilities;
- identifying potential environmental crimes through the civil compliance monitoring program, and

- assisting in bringing environmental criminals to justice;
- developing compliance monitoring tools such as inspection guides, checklists, or manuals;
- promoting the recommendations detailed in the OC guidance, "Role of the EPA Inspector in Providing Compliance Assistance," dated July, 1997, for providing either Tier 1 or Tier 2 compliance assistance during compliance inspections;
- developing, negotiating, or overseeing state or tribal compliance and enforcement grants;
- providing training, assistance, support and oversight of state and tribal compliance inspectors;
- issuing, when appropriate, Federal credentials to state and tribal compliance inspectors;
- performing compliance screens for various Headquarters and/or state programs such as Performance Track, Project XL, etc.

It is expected that the regions, for each of their programs, will conduct many of these activities. The specific combination of activities will depend upon the availability of intra- and extramural resources, and working agreements made between state and tribal governments.

Compliance monitoring does NOT include: 1) preparation of Notice of Violations (NOVs), warning letters, and administrative or judicial complaints, and 2) development of evidence and other information where a violation has already been determined to have occurred.

Reference: OECA's Office of Compliance, Compliance Monitoring Program Review Team Report, November, 1999

D. Compliance Assistance

All regional programs should utilize compliance assistance, as appropriate, to help ensure that the regulated community understands regulatory obligations and how to comply with applicable environmental requirements. Regions should also track and measure the results of their compliance assistance activities.

One objective of compliance assistance is to achieve and advance regulatory compliance. Compliance assistance includes activities, tools or technical assistance which provide clear and consistent information for 1) helping the regulated community to understand and meet its obligations under environmental regulations; and 2) enabling compliance assistance providers with the ability to aid the regulated community in complying with environmental regulations. Compliance assistance may also help the regulated community find cost-effective ways to comply with regulations and/or go "beyond compliance" through the use of pollution prevention, environmental management practices and innovative technologies, thus improving environmental performance. The core national compliance assistance program consists of the following activities:

- conducting workshops/training, making presentations at meetings, developing compliance assistance tools, distributing outreach material, conducting on-site visits, providing telephone/hotline assistance;
- focusing compliance assistance efforts on targeted environmental problems, as well as on new rules, SBREFA rules or economically significant rules which apply in particular to small businesses and communities which often lack expertise to understand technical environmental

- regulations;
- using compliance assistance in integrated compliance assurance strategies, as appropriate;
- contributing planned regional projects to the annual Compliance Assistance Activity Plan;
- measuring the outputs of compliance assistance activities and outcomes of selected activities;
- reporting on compliance assistance activities (workshops/meetings/trainings; telephone hotlines; compliance tools developed and distributed; and on-site visits) in the Reporting Compliance Assistance Tracking System (RCATS);
- serving predominantly as a “wholesaler” of compliance assistance to enable other assistance providers to offer assistance directly to the regulated community. “Retail” or direct assistance should be focused on non-delegated programs and national/regional initiatives, as appropriate;
- promoting national compliance assistance tools and activities, such as the National Compliance Assistance Clearinghouse, the Compliance Assistance Centers and Compliance Assistance Forum;
- using compliance assistance materials in conjunction with the Small Business Compliance Policy and encouraging states to adopt EPA’s 1995 Small Communities Policy;
- coordinating with Headquarters, other EPA regions and other compliance assistance providers, such as states, on compliance assistance needs and activities to enable all providers to leverage resources;
- holding an annual regional stakeholder meeting(s) to obtain feedback on compliance assistance planning; and
- assisting in compliance assistance targeting and data analysis, e.g., in selecting sectors that need assistance and developing compliance assistance materials.

Regions should undertake these compliance assistance activities strategically, employing integrated planning and use of compliance assistance tools, as appropriate, tracking the results and measuring the effectiveness of compliance assistance activities. Inspectors providing Tier I or Tier II compliance assistance during compliance inspections in accordance with the recommendations of the July, 1997 OC guidance, “Role of the EPA Inspector in Providing Compliance Assistance,” should refer to the Compliance Monitoring section of the Introduction to Core Program (p. 2) for further information.

E. Data Quality

The Office of Compliance, Enforcement Planning, Targeting, and Data Division, is developing a comprehensive Data Quality Strategy that will improve upon the disparate approaches previously used in order to provide a strategic vision and implementation schedule to assure that enforcement and compliance data can be used as an effective tool to manage our program and report on our accomplishments. The Data Quality Strategy will be the basis of the new Quality Management Plans that OC will be taking the lead on developing in FY 2002. This strategy will be developed in FY 2001 and will include such activities as:

- identification of key enforcement and compliance program data fields;

- developing standards for verification and validation of the accuracy of data being entered into key data fields in each data base;
- periodic random data audits and targeted data clean-ups; and
- updating guidance on the input and use of certain key data fields in each data base, including identifying where underlying media specific program guidance needs to be updated and/or revised.

F. EPA State Relations

Partnership with the states is a central component of the core program. In developing and maintaining strong partnerships with states, regions will jointly develop enforcement and compliance assurance priorities that consider national program, regional, and state priorities. These priorities should include strategies that use the full range of tools to improve environmental performance and ensure compliance with environmental requirements. Regions and states are also encouraged to include implementation of innovative projects such as Performance Track in their set of priorities. As outlined in the January 19, 2001 memorandum, "Enforcement and Compliance Operating Principles for the National Performance Track Program," as one of the incentives for participation in the first-tier Achievement Track, the Agency has committed to consider all participating facilities as "low priority for routine inspections." All regions are expected to incorporate this commitment into inspection targeting efforts, both in the context of regional targeting and in negotiating with state partners.

In support of the Agency's Achievement Track of the National Performance Track program, the regions (in concert with Headquarters offices and DOJ) are conducting compliance screens of all applicant facilities. The regional effort includes searches of Agency databases, follow-up on information found there, program by program inquiries about new information not yet accessible on databases. The region will assess the findings against the Performance Track entry criteria, and make recommendations as to the appropriateness of each facility's participation.

The following four areas of focus should be considered in working with states:

1. Joint Planning, Priority Setting, and Work Sharing

Regions and states should implement joint planning, priority setting, and work sharing to achieve efficient and effective identification of enforcement and compliance priorities, deployment of resources, coordination, and greater compliance, all of which will result in improved environmental performance. OECA guidance and policy, such as the 1986 "Revised Policy Framework for State/EPA Enforcement Agreements" and its subsequent addenda, should continue to guide Regional discussions with states. The "Annual Compliance Assistance Plan", issued in April 2001, is OECA's guidance on planned compliance assistance activities.

2. Consultation on Enforcement and Compliance Assurance Activities

Ongoing consultation and communication between EPA and states is critical for a smooth working relationship. Regions and states should ensure that established processes and procedures for notification of inspections and enforcement actions in authorized and non-authorized programs, where applicable, are followed per the “no surprises” policy described in the 1986 Policy Framework and appropriate program specific policy. This includes discussing enforcement activities in priority sectors and the status of enforcement cases with state co-regulators.

3. Environmental Compliance Analysis and Assessment

EPA and states together should assess the general state of compliance and enforcement program implementation in all major program areas using EPA and state sources of information. Each region should meet with its states frequently to identify areas of significant environmental problems and of significant noncompliance, develop strategies to address these problems areas, and evaluate the effectiveness of those strategies. OECA will continue to assist regions in problem identification, strategy formulation and evaluation by providing information available from data systems and other sources on a periodic basis. EPA and states should also find opportunities to share information on compliance assistance activities. For example, one option for states to share compliance assistance information with EPA is to report to the Pollution Prevention Compliance Assistance Measurement System developed by the New England Waste Management Officials Association (NEWMOA).

4. Effective State Enforcement and Compliance Assurance Programs

Regions should work with states to develop enforcement and compliance assurance agreements. These may be stand-alone agreements or may be incorporated into grant work plans for categorical grants agreements, Performance Partnership Grants, and Performance Partnership Agreements. The work plans may be tailored to specific state conditions and levels of performance. In negotiating grant work plans, regions and states should consult National Program guidance and follow EPA grant regulations, i.e., 40 CFR Parts 31 and 35. Reference should be made to the Core Accountability Measures (joint EPA/ECOS memorandum dated April 22, 1999). Some regions and states are piloting new enforcement and compliance assurance performance measures, which may be used in addition to or in lieu of the accountability measures after consultation with OECA.

2. & 3. CLEAN WATER ACT AND SAFE DRINKING WATER ACT PROGRAMS

The “Water” Program encompasses six separate programs under both the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). Each program has different characteristics (e.g., some programs have national data bases and some do not), and, as a result, the “core program” varies somewhat from program to program. Therefore, in order to provide clarity, shared core program elements are listed up front followed by a description of compliance and enforcement activities unique to each water program. Regions should also refer to information contained in the Introduction to Core Program (p. 1) for further detail on shared core program elements.

2. CLEAN WATER ACT PROGRAMS

The following core program elements are shared by all of the CWA programs:

- Regions should implement existing national compliance and enforcement policy and guidance, e.g., the 1989 *National Enforcement Management System (EMS)*;
- Regions should consider all available data in implementing the compliance and enforcement activities described below;
- Regions and states must maintain an effective inspection program in each of the water program areas;
- Each violation deserves a response. Regions and/or states are expected to evaluate all violations, determine an appropriate response, per the EMS if applicable, and take that action. Regions should focus actions in the priority areas listed in the MOA while maintaining a presence in all water programs; and
- Regions/states are expected to take timely and appropriate actions against facilities in significant noncompliance (SNC). Any facility not addressed in a timely and appropriate manner is an exception and should be targeted for Federal enforcement.

A. NPDES and Pretreatment Programs

Compliance Assistance

Regions should refer to the Compliance Assistance section of the Introduction to Core Program (p. 3) for general information regarding these activities. In addition, regions should support and encourage state small community environmental compliance assistance programs that are consistent with EPA's November 22, 1995 Policy on Flexible State Enforcement Responses to Small Community Violations.

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

Compliance Monitoring

(A) Inspections

(1) NPDES PROGRAM

It is an Agency goal to provide 100% coverage of all major NPDES facilities and POTWs with approved pretreatment programs or equivalent coverage of a combination of major and priority minor facilities annually. Regions should focus inspections in Clean Water Act priority areas as defined in the MOA. Regions may shift a portion of their total inspection resources from major to minor facilities, particularly in priority watersheds or facilities discharging to impaired waters (e.g. fish advisories,

shellfish bed or beach closures, drinking water sources). Since an inspection at a major facility generally requires more resources than an inspection at a minor facility, inspection tradeoffs - that is the number of minor facilities substituted for major facilities - should generally be at a 2:1 or greater ratio. This ratio is based on previous work load models which averaged the amount of resources needed to conduct major and minor inspections. As we continue to focus on newer sources, such as SSOs, or on priority watersheds, minor sources are an important component of our inspection program. The region should briefly explain its inspection targeting process, particularly its rationale for trading off major inspections for minor inspections, in the MOA. Regions proposing to shift inspection resources from majors to minors must ensure that the necessary minor facility information and inspection data is entered into PCS, either by the region or the state, in order to receive "credit." It is very important that minors data be reported into PCS to reflect our activities and document results. We now rely solely on minor data entered into PCS to evaluate and report results.

Biosolids

Although sludge (or biosolids) is not an area of national priority for OECA, we recognize that some regions expend resources conducting sludge inspections. Therefore, regions who are planning to conduct additional sludge inspections at the expense of other CWA core activities should provide a rationale for their investment in this program. Regions should report sludge inspections along with other inspections, where applicable, on the MOA form as part of the end-of-year report.

Performance Expectations

Regions should make projections in the MOA for both state and Federal inspections, identifying the universe of NPDES majors, and projecting the number of majors and the number of minors to be inspected. The projections should be shown as Federal and state by state, as provided in the NPDES inspection chart attached to the MOA guidance.

(2) PRETREATMENT PROGRAM

In the pretreatment program, regions must insure coverage in approved programs as well as those where EPA is the control authority. The goal is to annually inspect 100% of the POTWs with approved pretreatment programs in unapproved states. Where EPA is the control authority, regions should evaluate each SIU file (e.g., review the DMR and periodic compliance reports) and follow-up with field investigations at 100% of the SIUs with violations identified in their periodic reports, or where the region believes that SIU discharge may adversely impact POTW operation or effluent quality or may be impacting receiving water quality.

Performance Expectations

Regions will make projections for both Federal (and state as appropriate) and report by state the number of inspections (and % of universe covered) in approved pretreatment programs and the number of investigations (and % of universe covered) in non-approved programs.

(B) Discharge Monitoring Report (DMR) Review/Review of Permit Compliance System (PCS) Data

Regions should routinely review all DMR reports received for compliance with permit limits. (Note that Regions may accomplish this review through a routine screen of the PCS data and reviewing the DMRs themselves as necessary.) Regions also should routinely review data submitted by states to PCS and review other information available to them on a facility's compliance with its permit and other Clean Water Act requirements.

Enforcement Actions

Regions should refer to the Introduction to Core Program (p. 1) for general information regarding these activities.

Performance Expectations

EPA will consider the following data that is currently reported into PCS: number of SNCs (and % of universe); number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining, with an explanation provided by facility for those remaining on the Exceptions List. No more than 2 percent of all major facilities should be on the exceptions list at any one time. Regions not able to commit to this should identify this as an "exception" in their MOA submission and propose an alternative projection.

Program Leadership and Evaluation**Data Entry/Data Management**

There are two components to data management - (1) the programmatic data in the Permit Compliance System (PCS) and (2) the data required to be reported to Docket and in the case conclusion data sheets.

(1) DMR data entry in PCS will be monitored and all the required data elements ("WENDB") are expected to be put in for majors. Where activities at majors have been traded off for activities at minors (e.g., inspections), regions and states are expected to input the PCS data for the minors.

If regions cannot maintain this level, the region should identify this as an "exception" to the core and indicate what level it will attain.

Headquarters will monitor regional/state data entry quarterly.

(2) Regions are expected to report to PCS and to Docket all administrative orders, administrative penalty orders, and civil referrals, as well as to complete and enter the case conclusion data sheets for all concluded actions.

B. Section 404 (e.g. Wetlands)

The following activities are important to achieving the ongoing environmental goals of “no net loss” of wetlands and achieving a net increase of 100,000 acres of wetlands per year by 2005.

Compliance Assistance

Regions should target compliance assistance activities towards smaller landowners/farmers who may not fully understand the Section 404 program. Regions should closely coordinate these activities with the other Federal agencies which may be involved. In addition, regions should report on compliance assistance activities through RCATS.

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction (p. 1) and the list of shared core program elements for the CWA Programs (p. 7) for general information regarding these activities.

Compliance Monitoring

Regions should have a process for identifying/targeting/inspecting and otherwise responding to illegal activities. Regions should continue to report quarterly to OECA/ORE/WED on 404 violations and investigations. Regions are expected to implement the new timely and appropriate (T&A) policy. Since only two states have been delegated parts of the Section 404 program, this is primarily a Federal effort. The Regions must also coordinate, as appropriate, with other Federal agencies which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement (e.g., Corps of Engineers, NRCS, Fish and Wildlife Service, etc.).

Performance Expectations

Regions should project and manually report through “the shell” on the number of site visits/inspections in the 404 program. This will be Federal only, except Regions II and V should also submit numbers for state inspections/site visits for New Jersey and Michigan, as well as for Federal actions.

Enforcement Actions

Whenever appropriate in 404 and non-404 water enforcement settlements, regions should use supplemental environmental projects to restore and enhance wetlands and to create wetland mitigation projects.

Program Leadership and Evaluation

The Section 404 program does not have a national data system. Regional wetlands program managers, however, are expected to report to Docket all administrative orders, administrative penalty orders, and civil referrals, as well as to complete and enter the case conclusion data sheets for all concluded actions. Regions are also expected to report violations and responses quarterly to Headquarters (ORE/WED) using the existing format.

Performance Expectation

At midyear and in end of year reports, as appropriate, Regions will describe their review and evaluation of state programs, major findings, and any corrective actions initiated or planned. For Federal programs, regions should describe their program and any corrective actions they have initiated or planned.

C. Oil Pollution Act (Section 311)

The OPA program is a Federal only program, therefore, all enforcement activities are Federal and there is no state oversight component. OPA inspections take place under the responsibility of the Office of Solid Waste and Emergency Response (OSWER).

Compliance Assistance

Regions should refer to the Compliance Assistance section of the Introduction to Core Program (p. 1) for general information regarding these activities.

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

Compliance Monitoring

Regions should refer to the Compliance Monitoring section of the Introduction to Core Program (p. 2) for general information regarding these activities.

Enforcement Actions

While the OPA program does not have a formal EMS, Regions must have a program to identify violations, to prioritize violations for actions, and then to take appropriate actions. Regions are expected to comply with the Section 311 penalty policy. Regions who have prior Headquarters' approval may use the Section 311(b)(3) and Section 311(j) expedited enforcement program as a complement to their full administrative and civil judicial enforcement efforts.

Program Leadership and Evaluation

Regions should routinely review the ERNS database on spills to ensure that all spills are being appropriately addressed.

3. SAFE DRINKING WATER ACT PROGRAM

A. Public Water System Supervision (PWSS) Program

OECA will be seeking input from the regions and from drinking water stakeholders to develop a strategy to implement the enforcement and compliance recommendations of the annual National Public Water System Compliance Reports, and how activities to support implementation can be incorporated into each region's MOA. The general recommendations are included in the descriptions below.

Compliance Assistance

Regions should target compliance assistance towards smaller drinking water systems, especially those with part-time operators. Regions should work with the states to increase small system operators' awareness of their monitoring and reporting requirements, and to build small systems' technical and financial capacity to perform the required activities. The total coliform rule, historically the most violated MCL, is another area where compliance assistance to small systems can be expected to produce significant results. Here, regions should encourage distribution of compliance assistance materials during sanitary survey inspections, and circuit riders as means of detecting and avoiding the conditions that lead to microbial contamination. When compliance assistance is not effective, regions should pursue enforcement actions.

Regions should also focus compliance assistance on provisions of the Disinfectant Byproducts Rule which will become effective in November 2001. This effort will include outreach and education programming to ensure that sources understand the requirements and assistance to help them develop the program and system changes needed to implement the new rule. We encourage regions to make use of the recently-established Local Government Environmental Assistance Network (LGEAN) as a ready source of compliance assistance information (both from EPA and from its non-governmental partners), and recommend marketing LGEAN to drinking water system operators as a compliance assistance tool. In addition, regions should report on compliance assistance activities through RCATS.

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) and the list of shared core program elements for the CWA Programs (p. 7) for general information regarding these activities.

Compliance Monitoring

(a) Inspections/Sanitary Surveys

Regions and states should maintain an effective inspection/sanitary survey program. Inspection and sanitary surveys should be reported into RECAP. Since all but two jurisdictions have been granted primacy for the drinking water program, this activity is mostly a state activity. Regions with direct implementation programs (Regions III and VIII) and all regions which directly implement the program on Indian lands should report numbers of inspections completed.

(b) Review of data in the Safe Drinking Water Information System (SDWIS) and review of other information on compliance available to the region.

Regions with direct implementation programs are expected to input required data into SDWIS. This is especially important for regions with direct implementation programs on tribal lands. Data entry for those programs will be monitored quarterly. Regions are expected to routinely review data submitted by states to SDWIS and review other information available to them on a drinking water system's compliance status. No new reporting is required by this measure.

Enforcement Actions

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) and the list of shared core program elements for the CWA Programs (p. 7) for general information regarding these activities.

(a) Resolution of SNCs

In evaluating Regional performance, OECA will look at: the number of SNCs (and % of universe); number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining. Information needed to support this is already reported in RECAP and is already required to be reported to SDWIS. Regions not able to commit to this should identify this as an "exception" in their MOA submission and provide an alternative projection.

(b) Implementation of the Safe Drinking Water Act Amendments of 1996

These amendments fundamentally changed the drinking water program by providing the Agency and the states new tools, for example, the State Revolving Fund and new enforcement authorities, including administrative order and penalty authority for Federal facilities. Headquarters and the Regions have developed implementation plans.

Performance Expectations

Regions will continue to implement the 1996 amendments consistent with the implementation plans and include Federal facilities as part of other identified drinking water priority activities; conducting EPA inspections at Federal facilities using the newly clarified authorities. Regions should also incorporate a Safe Drinking Water Act component in all regional multimedia inspections of Federal

facilities as outlined in the Federal facilities core program section of this MOA guidance. When regions find violations, they should take enforcement action, as appropriate.

c) Targeting Activities

To ensure that water is safe to drink, the regions should evaluate the results of source water assessments and the unified watershed assessments in targeting some enforcement activities in FY 2002/2003 where sources of drinking water are contaminated or threatened.

Program Leadership and Evaluation

Regions and states are expected to ensure that all required data is input into SDWIS, including Federal facilities as applicable. Regions with direct implementation programs, including those on tribal lands, are expected to input the data themselves. If regions are directly implementing any of the new drinking water regulations, they must ensure that the required data is in SDWIS.

B. Underground Injection Control (UIC) Program

Compliance Assistance

Regions should target compliance assistance efforts at Class V wells delineated in source water protection areas and other areas where the potential for groundwater contamination is high (e.g. fractured rock and karst areas; sole source aquifers). In addition, regions should refer to the Compliance Assistance section on the Introduction to Core Program (p. 3) for general information regarding these activities.

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) and the list of shared core program elements for the CWA Programs (p. 7) for general information regarding these activities.

Compliance Monitoring and Performance Expectations

(a) Inspections

Regions should insure an effective field presence through routine inspections of all classes of wells. The actual number of inspections and the distribution by well class will depend on the region and whether or not all or part of the program has been delegated to the states.

(b) Review of Compliance Information

Regions should routinely review inspection reports, mechanical integrity test results and other information available on the compliance status of injection wells. Regions should also review other information available to them which suggests the existence of Class V well or wells. Based on review of

this information, appropriate inspections or enforcement actions should be targeted.

Enforcement Actions

Resolution of SNCs

In evaluating Regional performance, OECA will look specifically at: the number of SNCs ; number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining, with an explanation provided. Regions not able to commit to this should identify this as an “exception” in their MOA submission and provide an alternative projection.

In addition, regions should refer to the Introduction to Core Program (p. 1) for general information regarding these activities.

Program Leadership and Evaluation

There is no UIC national program data base; however, regions are expected to ensure that all required data is input into Docket and that case conclusion data sheets are completed and entered into Docket.

4. FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT PROGRAM

EPA and the public rely on pesticide manufacturers to provide accurate information about pesticides and their associated risks. Unregistered and ineffective antimicrobials, as well as products making false or misleading public health protection claims, pose a potential public health threat when the public makes inappropriate choices based on inaccurate or misleading information. Farm workers using pesticides must be informed about exposure to pesticides that are used on agricultural crops and must be informed how to properly handle and apply pesticides.

Compliance Assistance

In general, compliance assistance should be a focus in follow-up to the issuance of new or amended regulations, and will also be incorporated into FIFRA national sector initiatives.

For FIFRA, the National Agriculture Compliance Assistance Center will continue to develop and provide compliance assistance materials related to FIFRA, Worker Protection requirements, and other EPA requirements that impact the agricultural community. Regions should familiarize themselves with the material offered by the center and provide compliance assistance materials as they give presentations to agricultural groups/trade associations. Priority areas for compliance assistance activities include FIFRA section 6(a)(2) requirements, i.e., unreasonable adverse effects reporting, and low income communities as part of the urban initiative. In addition, regions should review compliance data to identify compliance assistance needs and provide input to the Center and the Agriculture Branch in OC. Regions are also encouraged to provide the Center with outreach materials that they/their states develop.

Another area for compliance assistance relates to citizen complaints and ensuring that use cases involving allegations of significant harm are tracked under FIFRA section 27 and are responded to adequately.

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

Compliance Monitoring

To maintain an effective compliance monitoring program, regions must allocate limited resources as effectively as possible, and trade-offs will have to be made. However, to the maximum extent possible, regions should target and conduct inspections and investigations to support pesticide initiatives, such as unregistered sources and e-commerce.

Inspections are expected to be completed for every FIFRA core program area. Regions should ensure inspection coverage in states without EPA enforcement cooperative agreements. Regions are expected to track and prioritize tips/complaints, and follow-up, as needed. "Follow-up" means that the region needs to evaluate the tip/complaint to determine the appropriate next step, and either: 1) refer the tip/complaint to a state as appropriate and track it through resolution consistent with national guidance; or 2) obtain additional information through Federal investigation/show cause letter if necessary and issue appropriate Federal action as appropriate. Regions are also expected to follow-up on all referrals received from Headquarters and states.

Performance Expectations

For FIFRA, the primary focus is on providing assistance/training/oversight to states/tribes carrying out FIFRA related enforcement under cooperative enforcement agreements. This includes issuing credentials as appropriate and providing training and grant oversight. Regions should refer to the Federal facilities section of this attachment (Section 9) for guidance on including Federal facilities in core program activities where applicable. EPA is responsible for enforcing data quality requirements (GLPs), section 7 establishment registration and the submission of production data, import and export requirements, and the reporting of unreasonable adverse effects under section 6(a)(2) of FIFRA. States conduct product compliance inspections and may take the enforcement action or in some cases, refer the case to EPA. Regarding enforcement of pesticide use provisions, the statute gives primary use enforcement responsibility to the states. EPA has a state oversight and training role, as well as a compliance assistance role. A use initiative will be planned and implemented in this MOA cycle by Headquarters, regions, and state partners.

In FY 2000 and 2001, regions participated in a WPS labeling initiative, which helped to provide a baseline of label compliance, and to improve compliance monitoring communication and cooperation among Headquarters, regions, and state partners. Regions are expected to use the knowledge and

experience gained from this initiative to encourage state lead agencies to continue routine surveillance of pesticide labeling at pesticide producing establishments, dealer and distributor locations. Regions and states should focus on implementing WPS use enforcement, and working with Headquarters to reduce any impediments to this program.

Enforcement Actions

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

Program Leadership and Evaluation

Headquarters has general expectations with regard to data entry, use of press releases, and assessment of state performance under enforcement cooperative agreements.

Data Entry: It is critical that the regions enter all Federal and state data into the FIFRA/TSCA Tracking System (FTTS), which is then merged into the National Compliance Data Base (NCDB). In addition, regions should refer to the Data Quality section of the Introduction to Core Program (p. 5) for general information on these activities.

Press Releases: The regions should use press releases for regional activities which are not part of national initiatives, as appropriate, in order to promote further compliance.

State Cooperative Agreements: OECA will provide a draft pesticides state enforcement cooperative agreement guidance for review and comment separately from the MOA guidance. This cooperative agreement guidance, once finalized, should be followed by the EPA Regional offices when negotiating enforcement cooperative agreement commitments. For purposes of the MOA discussions, OECA is looking for each Region's projections on the number of FIFRA inspections which they will be using as the basis for negotiations with each of their state enforcement grantees.

5. TSCA/EPCRA PROGRAMS

The program focus for FY 2002/2003 is to ensure that the regulated community provides accurate information about toxic chemicals and their associated risks to the EPA, to the public, and to other Federal, state, and local entities. EPCRA includes two distinct programs, right to know under EPCRA 313 and release notification and emergency preparedness under CERCLA 103 and EPCRA 304, 311 and 312. EPA and the public rely on EPCRA for information on chemicals entering the environment, and on the storage of chemicals at facilities. EPA, state and local entities, and the community rely on the combined EPCRA/CERCLA authorities to prepare local chemical emergency response plans, and to more safely and adequately respond to chemical emergencies. EPA must ensure that companies report accurately and within required time frames. The public's right-to-know is also encompassed in the TSCA regulatory programs for asbestos, PCBs, and lead-based paint, as well as Core TSCA (sections 4, 5, 8, 12 and 13).

Compliance Assistance

All regions need to maintain expertise in the EPCRA and TSCA program areas in order to respond to regulated entities and the public. Compliance assistance should be a focus in follow-up to the issuance of new or amended regulations, and will also be incorporated into national sector, or other compliance and enforcement initiatives as appropriate. In FY 2002, new regulations which will require focused compliance assistance include the TSCA 403 rule, the asbestos Worker Protection Rule, and new reporters for EPCRA 313.

Initiatives are collaboratively developed by Headquarters, the regions, and the appropriate program office. Examples of recent compliance assistance initiatives include the National Nitrate Initiative, the Chemical Industry Sector Strategy's EPCRA project, EPCRA 313 reporting guidance for specific industry sectors (food processing, rubber and plastics, and the semiconductor industries), and internet access to comparative TRI data from facilities in five sectors via the Sector Facility Indexing Project (SFIP). Past initiatives which focused on a particular sector resulted in increased compliance rates, and in FY 2002/2003 the regions and program offices will be involved in identifying potential industries or sectors to focus Agency resources. The strategies for previous initiatives included a focused compliance assistance period with a recommended time frame for targeted assistance to ensure that the regulated community has the information which they need to comply.

For the chemical industry, the regions should promote and utilize, where appropriate, ChemAlliance, the compliance assistance center for the chemical industry. ChemAlliance can be used by regions and states as a tool to provide multi-media compliance assistance, including information related to TSCA, EPCRA and CERCLA 103. Appropriate Regionally-developed compliance assistance materials can also be made available through ChemAlliance.

Compliance assistance goals for the EPCRA 313 enforcement program are revised for FY 2002/2003. Regions should communicate with 20% of the known EPCRA Section 313 regulated universe within their region each year. This can be accomplished by telephone calls or by workshops/seminars. This will move toward the goal that every 5 years, the entire known regulated universe has had EPA-provided compliance information. Telephone calls may be initiated by a regulated entity or the region. The region should provide compliance information such as the basic requirement of EPCRA and the criteria that triggers it, the telephone number for the EPCRA Hotline, and the internet address for the TRI Program web page. For region-initiated calls, outreach and compliance assistance should be targeted at facilities with known or suspected problems. To track our compliance assistance efforts, regions should maintain a record of each call, recording information such as: date of the call, the name of the regulated entity, and the nature of the information exchanged. Patterns noted from this screening information also help the region identify types of facilities to investigate or inspect. Regions should maintain records of the names and numbers of regulated facilities that attend regional workshops/seminars. OECA believes that such efforts are important in order to quantify the Agency's efforts to communicate fundamental EPCRA Section 313 information to the regulated universe.

Compliance Incentives

Regions will work with OECA to identify candidate industries or sectors for compliance incentive programs in order to focus our efforts to promote compliance. OECA will use national

meetings and conference calls as the means for selecting industries and/or sectors for Federal compliance incentive programs. In FY 2002/2003 Federal compliance incentive initiatives may be developed to focus efforts for EPCRA 304/CERCLA 103, EPCRA 311/312, and EPCRA 313. The compliance audit initiative started in FY 2001 for the lead-based paint program will continue in FY 2002. As part of the Agency's PBT program, TPED will continue to work with Regions to further decommission PCB-laden equipment. The Core TSCA Center, working with Regions 2 and 5, and any other interested regions, will develop a compliance audit program in FY 2002, and will focus efforts to negotiate corporate compliance audit agreements. Federal compliance incentives programs started in FY 2001 will be evaluated and may be refined in FY 2002/2003, as appropriate. Regions are encouraged to work with OECA when developing their own compliance incentive programs based on regional needs and priorities.

Except for the minimally-invested Core TSCA regions, regions should review and follow-up on, as appropriate, disclosures submitted under the OECA Audit Policy and Small Business Policy. Under Core TSCA, self disclosures received by minimally-invested regions should be forwarded to TPED for appropriate action.

Compliance Monitoring

To maintain an effective compliance monitoring program, regions must allocate limited resources as effectively as possible. Regions are encouraged to use screening and targeting tools to focus limited Federal resources on national and regional priority areas. A general area of emphasis is to target facilities that meet reporting criteria but have not reported. The Sector Facility Indexing Project (SFIP) is a regional data analysis and targeting tool. The information in SFIP could be used to analyze the relative quantities of data in the system and identify the better facilities.

EPCRA/CERCLA 103 and EPCRA 304, 311 and 312

Regions should target and conduct inspections and investigations on the following areas:

- EPCRA 313 - data quality, non-reporters, and new reporters for Pb and PBT Rules;
- EPCRA 311/312 - late reporters, non-reporters; and
- EPCRA 304/CERCLA 103 - late reporters, non-reporters - identifying Federally-permitted release violations as part of multi-media cases, particularly in conjunction with Clean Air Act violations.

In the EPCRA 313 program, regions are expected to conduct at least 10 on-site Data Quality inspections each fiscal year as part of their overall inspection commitment. In a FY 2002/2003 pilot project, regions may also include "desktop inspections" in lieu of a portion of their traditional EPCRA 313 on-site inspections. Desktop inspections are the functional equivalent of on-site inspections and include the initial targeting and screening activities associated with on-site inspections, but allow regions to obtain information directly from a facility or database and issue an enforcement response (where appropriate) without conducting an actual on-site inspection. The data obtained in a desktop inspection is evaluated for determination of a violation(s), and where a violation(s) may exist, the region will follow-

up with the appropriate enforcement response. This activity will save the regions time and travel resources. Because both traditional on-site inspections and desktop inspections can produce similar results, regions wishing to participate in the desktop inspection pilot project may, after negotiation with OECA, adjust their total number of inspection commitments to be offset by a specified number of desktop inspections. Regions combining inspections and desktop inspections should target 2 percent of the regulated universe in their region each fiscal year. The regions participating in the pilot project should manually track the number of EPCRA desktop inspections conducted.

TSCA

Regions should target and conduct inspections and investigations (including show cause letters or subpoenas where appropriate) focused in the following areas:

- lead-based paint: Lead Disclosure Rule (Section 1018), and TSCA Sections 402/403/406;
- asbestos: AHERA and asbestos MAP;
- PCBs: in conjunction with PBT efforts; and
- Core TSCA - in conjunction with the Core TSCA Center.

Regions should use screening and targeting tools to identify inspection targets based on national and Regional priorities. Regions should ensure inspection coverage in states without EPA enforcement cooperative agreements. With the exception of minimally invested Core TSCA regions, regions are expected to track and prioritize tips/complaints, and follow-up, as needed. Regions are also expected to follow-up on all referrals received from Headquarters and states. "Follow-up" includes evaluating the tip/complaint to determine the appropriate next step, and either: 1) refer the tip/complaint to a state as appropriate and track it through resolution consistent with national guidance; or 2) obtain additional information through Federal investigation/show cause letter/subpoena if necessary and issue appropriate Federal action as appropriate. Under Core TSCA, minimally-invested regions are to refer tips and complaints to the Core TSCA Center for follow-up. Those regions who chose to maintain a minimal presence in this program are expected to respond to questions from the regulated community, to conduct limited inspections as resources allow, and to work with Customs on the import/export program. For those regions (other than 2 and 5) who chose to continue to invest additional resources in Core TSCA compliance and enforcement, the Core TSCA Center will assist in targeting inspections, but the region is expected to provide legal and technical enforcement case support.

In the TSCA lead-based paint program, several new or relatively new rules merit increased attention and an increased number of inspections. Regions should screen tips and complaints for potential violations of the Lead Disclosure Rule, as well as the Section 402 Abatement, Training and Certification Rule and the Section 406 Renovator and Remodeler Rule, in those states without authorized programs. Each tip/complaint should be reviewed carefully to determine if follow up is necessary. In most instances, letters should be sent to potential violators identified in a tip or complaint as follow-up. After screening the response, in appropriate circumstances regions should conduct an on-site investigation. In those states without authorized 402 programs, regions should conduct 402 inspections of training providers and inspect work sites; this activity should be briefly described in the MOA submission as rationale for any trade-offs with Disclosure Rule or Section 406 inspection commitments.

Regions will be responsible for a prorated share of EPA's biannual commitment to conduct 9,000 lease reviews using extramural funds received in FY 2001. To support these efforts, on April 25, 2001 a joint memorandum from the Compliance Assistance and Sector Programs Division (CASPD) and the Toxics and Pesticides Enforcement Division (TPED) to the Regional Enforcement Division Directors outlined the distribution of \$1.23 million dollars in extramural funding to enable the regions to hire Senior Environmental Employment (SEE) Program inspectors to conduct the 9000 lease agreements under the Real Estate Disclosure Rule ("1018 Rule"). On May 1, 2001, that money was reprogrammed to the regions and was available to begin the hiring process. We anticipate that 4.5 lease reviews will equate to one inspection. Therefore, we have targeted a goal of 2000 inspections to be conducted in FY 2002. The regional inspection break out will be forwarded to the regions in June 2001.

In the TSCA asbestos program, inspection resources should be targeted at school districts with known AHERA compliance problems and at charter schools in states where EPA is the lead for inspections and enforcement. In non-waiver states, regions will follow-up on violations referred by states, and develop appropriate enforcement responses. Tips and complaints should be followed-up on as appropriate.

Since the inception of the TSCA PCB program some 25 years ago, much progress has been made in reducing the risks of PCBs to the public's health and to the environment. Through EPA's regulatory and enforcement efforts, PCB equipment has been retired and replaced with non-PCB equipment, and much PCB waste has been properly destroyed or disposed. Still, there are over 20,000 PCB transformers that were registered by 2,500 companies with the Agency as of December 1999, that are still in use. Additionally, there are approximately 50 commercially permitted PCB disposal facilities, and 90 PCB commercial storers who continue to handle high volumes/concentrations of PCBs. In FY 2002/2003, the regions should use their enforcement resources to focus on the continued phase out of PCBs as well as monitoring PCB storage and disposal facilities. Using the Transformer Registration information, regions should target inspections toward users of high concentration PCBs and non-reporters. Enforcement follow-up to violations detected as a part of these inspections should promote, where possible, the retirement of PCB transformers through Supplemental Environmental Projects (SEPs). Recently, some regions have reduced their inspections to following-up on tips and complaints, and have not visited commercial storers and disposers for some time. Over the next two-year period, regions should inspect each commercial storer and disposer in their region at least once so that a baseline of enforcement activity at these sites can be established. (The region should include those facilities that have filed TSCA PCB Commercial Permit Applications that are still pending with OPPTS as part of the universe.) In summary, regions are expected to maintain baseline inspection/enforcement efforts with biennial inspections of commercial storers and disposers, and to target inspections of high

concentration PCB users and non-reporters of PCB transformers. Tips and complaints should be followed-up as appropriate.

Performance Expectations

In FY 2001, some responsibilities for the Core TSCA program were transferred from some of the Regions to the Core TSCA Center in Denver, Colorado, which is managed by the Toxics and Pesticides Enforcement Division (TPED). The Center is now responsible for targeting, implementing

national compliance assistance and compliance audit programs, negotiating corporate compliance audit agreements, conducting enforcement investigations of corporate-wide misconduct, and assuring continuity of compliance monitoring and enforcement from year-to-year. Regions 2 and 5 are to continue, as in the past, their field investigations and enforcement program.

Enforcement Actions

Regions, other than those who are minimally invested in Core TSCA, are expected to respond to violations in a timely manner, and in accordance with national policy as contained in the individual program enforcement response policies. For Core TSCA, minimally-invested regions will refer all self-disclosures and other violations to TPED for evaluation and appropriate action.

Regions may be asked to participate in enforcement case initiatives or cluster filings. These tools are used to further focus effort and resources. In all circumstances, cases filed as part of an initiative or cluster filing count as part of the annual MOA commitment, not as an add on. OECA will remain sensitive to regional priorities when identifying initiatives or cluster filings. Regions will work with OECA to identify candidate industries or sectors for enforcement case initiatives. OECA will use national meetings and conference calls as the means for selecting industries and/or sectors for Federal enforcement initiatives.

Program Leadership and Evaluation

Headquarters has general expectations with regard to data entry, use of press releases, and assessment of state performance under enforcement cooperative agreements:

Data Entry: It is critical that regions enter all Federal and state data into the FIFRA/TSCA Tracking System (FTTS), which is then merged into the TSCA, FIFRA, & EPCRA 313 National Compliance Data Base (NCDB). It is important for timely data entry to occur for purposes of national analysis and publication of data as appropriate. OECA will track data entry and will discuss any data issues with regional management. Regions should also enter data for EPCRA 301-312 into the National Enforcement Compliance Tracking and Reporting System (NECTAR) database. "Desktop inspections" for EPCRA and AHERA must be manually tracked and reported to Headquarters.

Press Releases: Regions should use press releases for regional activities which are not part of national initiatives, as appropriate, in order to promote further compliance.

State Cooperative Agreements: For purposes of the MOA discussions, OECA is looking for each Region's projections on the number of asbestos, lead 402, and PCB inspections which they will be using as the basis for negotiations with each of their state enforcement grantees. Regions should also refer to the EPA-State Relations section of the Introduction to Core Program (p. 5) for further information regarding these activities.

6. AIR PROGRAM

The Clean Air Act (CAA) core program covers activities relating to Section 110 (SIPs/FIPs/TIPs), Acid Rain, Title V Operating Permits, Stratospheric Ozone Protection, NSPS, NESHAP/MACT and PSD/NSR requirements. Regions should refer to the Office of Air and Radiation's FY 2002/2003 Implementation Plan for additional guidance relating to air compliance programs. Regions should refer to the Introduction to Core Program for general information on shared core program elements. Regions should also refer to the Federal facilities section of this attachment (Section 9) for guidance on including Federal facilities in core program activities where applicable.

Compliance Assistance

Regions should refer to the Compliance Assistance section of the Introduction to Core Program (p. 3) for general information regarding these activities.

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

Compliance Monitoring

States, local, and tribal agencies will have primary responsibility for the delegated or authorized programs and EPA will take the lead on the non-delegated programs (e.g. asbestos and radionuclide NESHAPs, CFCs, certain NSPS and MACT), and for compliance evaluations on tribal lands. The emphasis for FY 2002/2003 is evaluating compliance through implementation of the revised Compliance Monitoring Strategy (CMS). Guidance on conducting compliance evaluations will be provided in the revised CMS, which will include review of all required reports, Title V self-certifications and supporting documentation, facility records, visible emission observations, and source tests. The revised CMS was published in April, 2001. In addition to CMS implementation, there is continued emphasis on investigations, and an increased emphasis on implementation of the air toxics (MACT) program.

- Implementation of the Compliance Monitoring Strategy

Compliance evaluations of Title V major sources and synthetic minor sources that emit or have the potential to emit emissions at or above 80 percent of the Title V major source threshold should be conducted in each region in accordance with the revised Compliance Monitoring Strategy (CMS). The revised CMS provides a mechanism for recognizing and utilizing the wide range of tools available for evaluating and determining compliance. Increased emphasis should be placed on: providing training and implementation support for state, local, and tribal agencies; identifying the universe of sources subject to the CMS policy; ensuring that CMS plans are developed and negotiated; maintaining records of regional, state, local, and tribal compliance monitoring activities; and entering facility-specific compliance data in the national air data base (AIRS/AFS).

Consistent with the revised CMS policy, where source tests are conducted, state, local and tribal agencies should report these activities and the results in the national air data base (AIRS/AFS). Regions should ensure that states enter the appropriate test result information into the national air data base.

Regions should review one Title V certification for each source over the two-year MOA planning cycle. Regions should give special scrutiny to Title V permits from sources that report full compliance, especially in the source categories targeted as priorities by OECA. Regions should review and comment to the permitting authority on the compliance and enforcement components of at least 5% of the initial Title V permit applications they receive each year. Regions should also compare the information in the compliance certifications to the compliance status reported for sources in AFS to ensure their consistency.

Regions and state, local, or tribal agencies should continue to report into RECAP. In the MOA Clean Air Act investigation and inspection commitments chart, regions should give an estimate of the total number of state and Federal NSR or PSD investigations, number of other investigations, and provide estimates for subsets of this total that includes full compliance evaluations.

- **Investigations**

Regions in cooperation with participating state, local, or tribal agencies should initiate or continue conducting an average of 1 in-depth investigations per state, per year (for further information refer to the PSD/NSR priority of the MOA Guidance). Such investigations should include compliance evaluations, performance tests, and detailed document/data reviews as appropriate. Regions should estimate the number and type of CAA investigations expected in the MOA chart for CAA enforcement and compliance activities. For each investigation cited in the chart, Regions should document the types of violations sought.

- **MACT Implementation**

Regions should place more emphasis on implementation of the core air toxics (MACT) program, focusing on those standards that are of particular importance in their Region. Regions should develop and implement the air toxics program with state and local agencies through conducting compliance evaluations, using compliance assistance tools, assuring proper delegation of the MACT program, issuing applicability determinations, reviewing permits, and inputting data into AIRS/AFS and MACTrax.

Enforcement Actions

Headquarters expects that Federal enforcement will be considered where states fail to take appropriate action. In addition, regions should take appropriate Federal enforcement actions in situations where Federal involvement could be particularly helpful in bringing the matter to a successful and environmentally beneficial resolution (e.g., a company with violations in more than one state, transboundary issues, particularly recalcitrant violators, etc.) or is essential to ensure fair and equal environmental protection mandated by law.

- For all cases newly listed in accordance with the “Policy on T&A Enforcement Response to HPVs” during FY 2002/2003, Regions should strictly adhere to the requirements of the Policy.
 - < Regions should ensure appropriate enforcement actions are taken for violations reported on annual compliance certifications.
 - < Regions should ensure appropriate enforcement actions are taken for synthetic minor violations.
- For older cases, regions should ensure that 33 percent of all High Priority Violators, and all that are 3 years old or older, are addressed each year.
- Regions should evaluate and bring to closure 100% of any self-disclosures received by a region, consistent with national policy.
- Regions should reduce their Federal case backlog as described in the Cross-Program Core Activities section of the Introduction to Core Program (p. 1).
- Regions should aggressively exercise EPA’s 1997 clarified penalty authority against Federal agencies for Clean Air Act violations in appropriate circumstances.

Program Leadership and Evaluation

As part of the core, regions will participate in reviews of SIPs/FIPs/TIPs, regulations, policies, guidance, delegations, etc. For CAA purposes, Headquarters has the general expectations with regard to data entry and assessment of state performance, outlined below.

Regions should ensure that all necessary information such as the following be entered into the AFS data system to provide accurate and timely information:

- compliance evaluation dates and compliance status after evaluation, including date of violation, if appropriate;
- Title V compliance certification review and appropriate results code;
- stack tests dates and appropriate results code;
- enforcement actions (NOVs, orders, civil actions, criminal actions, etc) and date of action;
- number of settlements and date settlement entered, including penalties accounting for economic benefit.

Please refer to the Compliance Monitoring Strategy and the Minimum Data Requirements (MDRs) (www.epa.gov/ttn/airs/afs/memos/mdr.html) for more detailed guidance on reporting compliance information.

Timely and accurate enforcement data entry is extremely important for purposes of national analysis and publication of data, as appropriate. Accordingly, regions should include adequate data entry as a requirement for a portion of each state, local or tribal agency’s Section 105 grant. Headquarters will be tracking data entry and discussing it with regional management.

State, local or tribal performance assessment: Negotiation and development of an agreed upon work plan with state, local, or tribal agencies on enforcement activities, and assessment of their performance, is critical if resources are to be used as effectively as possible. Regions should assess the adequacy of state, local, and tribal agency enforcement programs, particularly with respect to appropriate penalties for High Priority Violators and identification of High Priority Violators, including quarterly/annual reviews, file audits, oversight inspections, etc. Regions will be negotiating Performance Partnership Agreements (PPAs), compliance assurance agreements, SEAs or state/local/tribal grant work plans, which will ensure adequate state, local, and tribal enforcement in all delegated areas, and include Federal roles and responsibilities. These negotiations should be consistent with the principles identified in the discussion of joint planning and priority setting and work sharing identified in the Cross-Program Activities Core and EPA-State Relations sections of the Introduction to Core Program (p. 1-5). Accordingly, regions should include adequate data entry as a requirement for a portion of each state, local, or tribal agency's Section 105 grant, as appropriate (e.g. synthetic minor sources).

7. RCRA HAZARDOUS WASTE PROGRAM

EPA is committed to ensuring that hazardous wastes are managed in manners that are protective of human health and the environment. Agency compliance assurance and enforcement activities will focus on those facilities posing the greatest risk to human health and the environment. For example, in the FY 2002/2003 MOA RCRA national priority, permit evaders, include illegal (e.g., dilution) hazardous waste treatment practices, and wastes that are no longer exempt under the Bevill amendment. Additionally, this focus will include companies that have sought to include themselves within the ambit of various exceptions or exemptions to the RCRA Subtitle C system but have failed to meet the terms of those exceptions or exemptions.

The goal of state and Federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, Federal compliance assurance and enforcement activities will complement state activities, where and as appropriate. Regions should refer to the Federal facilities section of this attachment (Section 9) for guidance on including Federal facilities in core program activities where applicable.

Compliance Assistance

Compliance assistance activities should focus on newly regulated handlers, handlers subject to new regulations, small businesses in the priority industrial sectors and other small businesses with compliance problems. Regions should enter their compliance assistance activities in RCATS; however, if the region conducts on-site compliance assistance they can instead record them in RCRAINFO. States are not able at this time to enter their compliance assistance into RCATS so they should continue to use RCRAINFO. Headquarters will generate RCRA compliance assistance numbers for Federal activities out of both RCATS and RCRAINFO.

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core

Program (p. 1) for general information regarding these activities.

Compliance Monitoring

The RCRA core program includes the compliance monitoring activities set forth in Tables I and II (pages 29 and 30). Both state and Federal compliance monitoring activities may be required in implementing the activities in Table I (e.g., maintaining the annual level of generator inspections). To facilitate accomplishment of Agency FY 2002/2003 priority activities, achievement of the level playing field principle and oversight of state compliance assurance and monitoring activities, Regions should maintain a Federal presence in the core program, conducting the compliance monitoring activities set forth in Table II.

The regions (in consultation with OECA) may conduct fewer or additional compliance monitoring activities if it is determined that such a deviation is warranted (based on the criteria listed below).

Table I - Combined State and Federal Core Activities

Statutory mandated inspections	Inspect ANNUALLY: <ul style="list-style-type: none"> - Federal facilities under SWDA§3007(c), and as amended by the FFCA - State and local facilities identified under SWDA § 3007(d) Inspect ONCE EVERY TWO YEARS: <ul style="list-style-type: none"> - Treatment, storage and disposal facilities under SWDA §3007(e) Inspect ONCE EVERY THREE YEARS ¹ : <ul style="list-style-type: none"> - Land disposal facilities under SWDA §3007(e)
Generators (LQGs)	Inspect annually 20% of the large quantity generator universe ²
Generators (SQGs)	Inspect annually <u>(*)</u> % of the small quantity generator universe ³

1 Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated facilities. Once it is determined that a given facility's ground water monitoring system is adequately designed and installed, an O&M inspection may become the appropriate ground water monitoring inspection. More frequent CMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate ground water monitoring systems; significant changes to ground water monitoring systems; and actual or suspected changes in local ground water regimes.

2 States with a relatively small universe should generally inspect a higher percentage of its universe.

3(*) States and regions should determine the appropriate levels.

Note: Regions should include RCRA Section 6002 inspections in conjunction with inspections of Federal facilities in accordance with E.O. 13101 and FFEO guidance (e.g. as resources allow). Results should be reported to FFEO.

Table II - Federal Core Activities

Facilities/Units that are not Part of an Authorized State Program	<p>Inspect ANNUALLY:</p> <ul style="list-style-type: none"> - Federal facilities under SWDA §3007(c), and as incorporated by the FFCA - State and local facilities identified under SWDA § 3007(d) <p>Inspect ONCE EVERY TWO YEARS:</p> <ul style="list-style-type: none"> - Treatment, storage and disposal facilities under SWDA §3007(e) <p>Inspect ONCE EVERY THREE YEARS¹:</p> <ul style="list-style-type: none"> - Land disposal facilities under SWDA §3007(e) <p>(At the region's discretion, the region may enter into an agreement with an unauthorized state under which the state would do some of these inspections under their state law)</p>
Generator	<p>Annually inspect at least 6 generators per state.</p> <p>(The regions are encouraged to perform these inspections: in community-based areas, priority sectors, and/or in support of EPA National initiatives; to support state referrals; to address illegal recycling and Bevill issues, entities with violations in more than one state, transboundary issues, particularly recalcitrant violators; etc.)</p>

Treatment, Storage, Disposal Facilities that are part of an Authorized State Program	Annually inspect at least 2 TSDFs per state. (The regions are encouraged to perform these inspections: in community-based areas, priority sectors, and/or in support of EPA National initiatives; to support state referrals; to address illegal recycling and Bevill issues, entities with violations in more than one state, transboundary issues, particularly recalcitrant violators; etc.)
Other Facilities	Inspections supporting citizen complaint or criminal investigations; off-site policy-related inspections; corrective action inspections, oversight inspections, non-notifier-related inspections, etc.

- 1 Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated facilities. Once it is determined that a given facility's ground water monitoring system is adequately designed and installed, an O&M inspection may become the appropriate ground water monitoring inspection. More frequent CMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate ground water monitoring systems; significant changes to ground water monitoring system; and actual or suspected changes in local ground water regimes.

Performance Expectations

The states and EPA regions should work together to determine the appropriate mix of Federal and state compliance monitoring activities to meet core program activities. In making its determinations, each Region should examine the compliance status within its geographic purview. In consultation with states, affected Indian tribes, and OECA, the following criteria should be used (as appropriate) to determine the appropriate field presence and create a credible deterrence:

- “feedback” received from external and internal stakeholders (e.g., environmental justice entities, Inspector General findings, citizens and community groups) regarding the quality of Federal and state enforcement programs;
- use (and frequency) of appropriate sanctions (e.g., administrative orders) to create a deterrence;
- the level of compliance monitoring activities needed to create a credible deterrent;
- abilities of state and EPA enforcement programs to identify violations and violators of concern and take timely and appropriate responses to noncompliance in accordance with criteria set forth in the March 1996 RCRA Enforcement Response Policy (and subsequent revisions);
- trends in compliance shown by performance measures, performance indicators, and other indicators (e.g., SNC rates, rates of compliance) relative to national and Regional levels;
- the degree to which a given enforcement program utilizes multi-media and other (e.g., integrated) strategies in determining priorities and implementing its compliance assurance and enforcement activities;
- “feedback” from joint or “side-by-side” (Federal and state) compliance monitoring activities;
- state environmental program reviews/audit findings and conclusions (including appropriate “self-evaluations”);
- current regional compliance assurance and enforcement commitments reflected in state-EPA work share agreements;
- EPA activities in fulfillment of National EPA priorities; and
- other criteria (e.g., state priorities relative to EPA priorities).

Enforcement Actions

In addition to the general core program activities listed earlier, the RCRA enforcement core program consists of complying with the 1996 RCRA Enforcement Response Policy (and subsequent revisions). This includes: 1) appropriately classifying all facilities meeting the definition of a significant non-complier; 2) taking timely and appropriate enforcement actions; and 3) entering all appropriate data into the national database in a timely and appropriate manner.

Regions should take appropriate Federal enforcement actions in situations where Federal involvement is necessary (e.g., to address public health and environmental concerns; to maintain a level playing field; to achieve National priorities; and to address environmental justice and citizen concerns). Federal enforcement could be particularly helpful in bringing complex matters to a successful and environmentally beneficial resolution (e.g., illegal recycling operations; Bevill waste-related issues; entities with violations in more than one state; trans-boundary issues; and particularly recalcitrant violators) or is essential to ensure fair and equal environmental protection mandated by law.

Finally, we expect that the regions will invest compliance monitoring resources to support efforts to develop enforcement actions against significant non-compliers with violations in more than one state.

Program Leadership and Evaluation

Data Entry: The following RCRAInfo data elements are essential with respect to measuring the RCRA program performance and must be entered into RCRAInfo in a timely manner by Federal and state enforcement personnel to accurately reflect program activities:

- 1) Evaluation data elements
- 2) Violation data elements
- 3) Enforcement elements

Note: Regions are reminded of the importance of entering and/or updating SNC determinations. Additionally regions should verify (for accuracy) facility SIC, process, legal status, and operating status codes.

State Oversight: Regions are expected to ensure that quality RCRA enforcement and compliance programs are maintained through traditional state oversight activities, work share agreements with states, and independent EPA compliance assurance and enforcement activities. In addition, Regions should refer to the EPA-State Relations section of the Introduction to Core Program (p. 5) for general information regarding these activities.

RCRA Underground Storage Tank Program

EPA considers implementation of the UST 1998 requirements for upgrading, replacing, or closing old tanks an important activity for protecting human health and the environment. Beginning December 23, 1998, all substandard USTs should have been upgraded (by adding spill, overfill, and corrosion protection) replaced or properly closed (either temporarily or permanently). As of December 22, 1999, all UST systems that were in temporary closure should be either permanently closed, upgraded, or replaced. Regions should also maintain an enforcement presence concerning leak detection and financial assurance violations. USTs that do not meet these requirements are in violation of Federal and state laws.

Compliance Assistance

States and EPA have done extensive outreach to UST owners and operators over the past 10 years. Additional investments in outreach and assistance should be strategically focused (e.g., small businesses with compliance problems).

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

Compliance Monitoring

Regions should work with states to assure compliance with UST requirements. EPA should continue to focus its Federal inspection resources in areas that could produce the greatest environmental and human health benefits. Generally, EPA should focus its inspection resources on Federal facilities; owners and operators of multiple UST facilities; owners and operators of USTs located in Indian Country; owners and operators of large facilities with multiple USTs; and facilities that are endangering sensitive ecosystems or sources of drinking water by failing to upgrade, replace or close USTs¹.

Performance Expectations

Regions should provide the number of UST facilities inspected (by the region, per state) and the number of UST facilities inspected by the Region in Indian Country. Also, provide the numbers of the following: field citations issued, field citations settled, administrative complaints/orders issued, administrative complaints/orders settled, and self disclosures received.

Enforcement Actions

Regions should take prompt and effective action on UST violations discovered, particularly those that present an imminent and substantial threat to health and the environment. Generally, administrative, or judicial complaints or orders should be issued.

¹ Some State-EPA cooperative endeavors may include other UST entities (e.g., owners and operators of individual UST facilities).

8. FEDERAL ACTIVITIES PROGRAM

The Federal activities core program for FY 2002/2003 is built around the following major areas:

NEPA

- Fulfill Agency obligations under Section 309 of the Clean Air Act, the National Environmental Policy Act, and related laws, directives and Executive Orders (all Regions).

International

- Assist in meeting the multimedia objectives for enforcement and compliance cooperation listed in the U.S./Mexico Border XXI plan (Regions VI and IX).
- Assist in efforts to improve colonias environmental conditions (Region VI).
- Assist in enforcement and compliance cooperative efforts with Mexico and Canada relating to transboundary compliance monitoring on the U.S. borders for hazardous waste, CFCs, selected chemicals (e.g., PCBs, mercury), and other regulated substances (Border Regions).
- Work with representatives of other countries, through established international agreements, to ensure compliance with domestic laws and international agreements (all Regions).

Ensure Federal Actions are Consistent with Goals

NEPA / CAA §309 Review: Regional commitments to carry out EPA's responsibilities to review and comment on major actions taken by other Federal agencies and by EPA to ensure that adverse effects are identified and are either eliminated or mitigated.

NEPA Compliance and "Cross-cutters": Regional commitments to carry out EPA's responsibilities to comply with NEPA and so-called "cross-cutters" (e.g., Endangered Species Act, National Historic Preservation Act, Executive Orders on wetlands, flood plains, and farmland).

Performance Expectations

Regions should review all major proposed Federal actions subject to NEPA and achieve successful mitigation for at least 70% of the adverse environmental impacts resulting from those actions.

Regions should prepare environmental reviews (EISs or EAs) for EPA-issued new source National Pollutant Discharge Elimination System (NPDES) permits where a state/tribe has not assumed the NPDES program; off-shore oil and gas sources; EPA laboratories and facilities; and Clean Water Act wastewater treatment plant grants.

Regions should prepare environmental reviews (EISs or EAs) for Special Appropriation grants (including the Colonias Wastewater Construction and Project Development Assistance programs) for wastewater, water supply and solid waste collection facilities; Border Environment Infrastructure Fund

(BEIF) for the US/Mexico Border Environment Cooperation Commission projects; and reviews conducted under the "voluntary NEPA policy."

Enforcement and Compliance with Other Countries

International Programs: The majority of requested commitments fall to Regions VI and IX for U.S. Mexico border work in connection with the La Paz Agreement and NAFTA-related work. Regions VI and IX will continue the implementation of U.S.-Mexico work plans for enforcement and compliance cooperation in the border region; work with the U.S. Customs Service to improve performance of joint responsibilities along the border; review the compliance status of U.S. receiving facilities and track the flow of hazardous waste. Headquarters will process notifications for import and export of hazardous waste to ensure compliance with domestic regulations and international agreements; and track the flow of hazardous waste both in and out of the United States.

9. FEDERAL FACILITIES PROGRAM

In order to complete the core program requirements for the Federal facilities enforcement and compliance program, Regional staff including Federal Facility Program Managers, media program and Regional Counsel staff, where appropriate, are expected to undertake the following activities:

Compliance Assistance

- continue to provide compliance assistance activities at Federal facilities including civilian Federal facilities;
- continue to provide compliance assistance efforts at all Federal agencies through meetings, conferences, publications, and training;
- continue to aggressively advocate and actively promote environmental management reviews for Federal facilities and conduct at least three EMRs per fiscal year (assuming three facilities agree to EMRs conducted and that travel and contract funds, if necessary, are available). Note: EPA is obligated to provide EMRs to Federal facilities under EO 13148; and
- assist Federal facilities and agencies in fulfilling the requirements of EO 13148, Greening the Government Through Leadership in Environmental Management, particularly requirements relating to environmental management systems (EMSs) and to toxic chemical use and release reductions.

Compliance Incentives

- work with their Federal facilities to promote OECA's compliance incentive policies (e.g. audit policy) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response;
- consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy;

- and
- actively support Project XL, Performance Track and other reinvention initiatives with Federal agencies.

Compliance Monitoring

- have a process for identifying, targeting, and inspecting Federal facilities, and responding to any violations discovered at these Federal facilities;
- continue to conduct at least two multimedia inspections each fiscal year. A multimedia inspection consists of (1) a CAA, CWA, or RCRA inspection plus at least one additional media inspection at the same facility; or (2) some combination of two or more CAA, CWA or RCRA inspections at the same facility;
- increase single and multimedia inspections at Federal facilities in those areas where EPA has new or clarified enforcement authorities against Federal facilities (e.g., SDWA, CAA, UST and TSCA Title IV);
- continue to aggressively seek reimbursement for costs of annual RCRA inspections at Federal facility treatment, storage and disposal facilities;
- include RCRA 6002 inspections in all EPA RCRA inspections of Federal facilities in accordance with FFEO guidance and report results of RCRA 6002 inspections to FFEO;
- conduct EPCRA inspections at Federal facilities to determine compliance with EPCRA sections 301 through 313, per the mandate of E.O. 13148;
- conduct annual inspections (or arrange with delegated states to conduct annual inspections) of all Federal facility treatment, storage, or disposal facilities in accordance with RCRA 3007(c); and
- continue to include Federal facilities as part of strategies to address media-specific MOA priorities, including significant Federal facilities located in place-based priority areas or within other significant sectors.

Enforcement Actions

- continue to lead and support enforcement negotiations, litigation and oversight at Federal facilities;
- utilize as appropriate, any new or clarified penalty authorities (e.g., CAA, SDWA and any other new authorities) and encourage referrals of cases from states that do not have full enforcement authority (e.g., CAA and UST); and
- encourage the use of SEPs as part of the settlement in cases.

Integrated Compliance and Enforcement Strategies

- implement strategies integrating compliance incentives, compliance assistance, compliance monitoring and/or enforcement activities to increase compliance at Federal facilities.

Program Leadership and Evaluation

- continue to utilize and efficiently manage and track regional Federal facility resources, particularly FTE usage and extramural funding provided by FFEO;

- continue to utilize EPA data systems and work to resolve any errors in data;
- continue to assist FFEO in resolving discrepancies in agency-wide environmental compliance status reports issued to agencies by FFEO;
- continue to provide RECAP information to the Office of Compliance in OECA;
- continue to input all Federal facilities compliance assistance activities into RCATS;
- encourage the use of OTIS and SFIP websites by other Federal Agencies; and
- encourage regional participation in monthly conference calls, bi-annual national meetings and other national events in order to promote Regional participation in Federal facility issues.

Regions are also strongly encouraged to use and provide environmental compliance status reports to Federal agencies.

10. MULTIMEDIA PROGRAM

The multimedia enforcement programs in existence at Headquarters and within each region are designed to foster a comprehensive approach to the resolution of environmental problems. "Comprehensive" means that applicable provisions of all environmental laws are used to achieve broad-based environmental benefits. This approach recognizes that many facilities and companies are operating in violation of more than one environmental statute. A multimedia strategy to target and address compliance problems and environmental harm results in a more effective overall management of a facility's or a company's environmental liabilities and is ultimately more cost-effective than bringing two or more independent media-specific enforcement actions. Multimedia-focused activities, including enforcement actions, reflect the goals of Federal reinvention and underlie much of the Agency's enforcement reorganization. Moving multimedia enforcement to the core program recognizes the experience gained, successes generated and resources already committed to implement this program.

Compliance Assistance

The areas that Headquarters believes warrant compliance assistance have been identified within specific program discussions. The primary focus of the Federal multimedia program should be on compliance monitoring and enforcement, rather than compliance assistance. However, the results of a multimedia analysis of specific facilities or entire companies might prove useful in planning future compliance assistance activities.

Compliance Incentives

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

Compliance Monitoring

The multimedia program will rely on the compliance monitoring efforts in existence for each media program. However, each region's multimedia targeting strategy and operational plan should establish protocols for coordinating multimedia investigations and actions among the individual media

programs. Headquarters hopes to assist the regions in promoting a process-based approach as well as a more targeted and efficient approach to multimedia inspections in general. This targeted approach includes multimedia inspections that might focus on several media, after a particular facility is assessed under all media prior to an actual inspection. The goal is to achieve the best environmental result while using resources efficiently.

Participation in cases developed under the NESS protocols (see paragraph b under Enforcement Actions) could entail the dedication and possible reprogramming of compliance monitoring resources.

Performance Expectations

Regions will be expected to continue to develop and refine their multimedia targeting strategy and operational plan for initiation of multimedia enforcement activities. Elements of this plan should include projected multimedia inspection and case development training, projected numbers of multimedia inspections and projected numbers of multimedia cases. Use of a multimedia checklist is not considered to be a multimedia inspection, but a tool for identification of potential multimedia targets.

Enforcement Actions

(a) General Approach

The multimedia or cross-statutory approach to case development can be employed in the context of three basic types of enforcement actions:

- against single facilities, where entire industrial processes at a facility are examined as a whole;
- against entire companies, where violations of different statutes that occur at various facilities indicate ineffective corporate-wide management of environmental compliance; and
- geographically based enforcement efforts arising from a comprehensive multimedia analysis of the environmental problem(s) in a given area (enforcement activities resulting from this analysis may be single or cross-media).

(b) National Enforcement Screening Strategy (NESS)

Each region should support the National Enforcement Screening Strategy (NESS) by participating in the initial facility screening exercise and to an increasing degree as facilities in the national strategy are identified. This includes case research activities, multimedia inspections of NESS facilities, and leading and/or participating in case development and litigation teams, as appropriate. Once the NESS selection process for identifying companies for a national enforcement investigation is completed, the region must determine the level of effort required for its participation. If the Region does not plan on participating in any aspect of the NESS, it should be reported in the MOA submissions as an exception to the multimedia core program.

Program Leadership and Evaluation

(a) Data Entry/Management

No new reporting is required. Current multimedia reporting requirements are outlined in RECAP. In addition, the number of multimedia and multi-facility referrals and penalty order complaints must be reported pursuant to the End of Year Enforcement and Compliance Data Reporting Guidance. Regions are reminded that in order to obtain an accurate count for multimedia and multi-facility judicial referrals, complaints and compliance orders, a multimedia-multi-facility case form must be completed. Regions are similarly reminded to notify the Multimedia Enforcement Division at Headquarters of all multimedia referrals.

(b) Regional-State Coordination

State involvement in national multimedia casework is strongly encouraged. In the case of enforcement actions developed under the National Enforcement Screening Strategy protocols, Regions should assess the level of state-initiated compliance assistance and enforcement activity once case management teams are developed and, where practicable, encourage state participation in the NESS-coordinated actions. Generally, although there is no oversight of state multimedia program development, per se, the regions may encourage the development of such programs as they see fit, requesting Headquarters assistance and resources as appropriate.

11. ENVIRONMENTAL JUSTICE PROGRAM

EPA is committed to implement Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," by focusing Federal attention on the environmental and human health conditions in these communities. The Office of Environmental Justice has worked with all parts of EPA, through a network of environmental justice coordinators, to integrate environmental justice in all programs, and within OECA to ensure that enforcement and compliance assurance addresses environmental justice concerns and that these activities are coordinated to more effectively address the needs of impacted communities.

Compliance Assistance

When conducting focused compliance assistance activities, the EPA regions and States should ensure that regulated entities within EJ communities, or impacted communities with significant minority and/or low-income populations, are recipients of EPA's compliance assistance materials and services as appropriate. In addition, when producing compliance assistance materials, EPA should make an effort to ensure that they are reproduced in the appropriate multiple languages of the impacted regulated community whenever possible.

Compliance Monitoring

EPA inspections are subject to the Executive Order 12898 which requires the EPA to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." Prior to planning and targeting inspections, it may be necessary to consider the following: (1) will the inspection impact

enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) has there been any public input regarding the area or facility; (3) is there existing research and data collection related to the health of and environment of minority populations and low-income populations and; (4) have differential patterns of consumption of natural resources among minority populations and low-income populations been identified. When targeting inspections, assess whether inspections are being targeted in a manner that offers equal protection to all populations. Equal protection does not mean equitable distribution of inspections. Rather, inspections should be targeted to diminish any excess risk which may be associated with areas that have a high concentration of industrial activity and/or toxins relative to the resident population.

If an inspection is performed as part of a review for a facility permit or approval, note that the EPA has promulgated an “Interim Guidance For Investigating Title VI Administrative Complaints Challenging Permits.”

The “Interim Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses” offers helpful hints on the collection and evaluation of environmental exposure and environmental health data, and may be of assistance in targeting inspections.

Performance Expectations

To ensure that the goals of environmental justice are accomplished, regional enforcement and compliance personnel should incorporate environmental justice concerns into ongoing enforcement/compliance activities. In particular they should ensure that:

- 1) the public has access to compliance and enforcement documents and data, particularly to high risk communities, through multimedia data integration projects and other studies, analyses and communication/outreach activities;
- 2) EPA’s policies, programs and activities, including public meetings, address minority and low income community issues so that no segment of the population suffers disproportionately from adverse health or environmental effects, and that all people live in clean, healthy and sustainable communities, consistent with Executive Order 12898;
- 3) noncompliance is deterred and environmental and human health improvements are achieved by maintaining a strong, timely and active enforcement presence;
- 4) enforcement actions are directed to maximize compliance and address environmental and human health problems in communities of low income and minority populations;
- 5) when possible, enforcement actions in or near EJ communities require environmental or human health improvements, such as pollutant reductions and/or physical or management process changes; and
- 6) when practical, participate in collaborative problem solving with other Federal agencies to address local environmental justice concerns; participate in the environmental justice training collaborative; and continue to participate in the National Environmental Justice Advisory Committee meetings.

Enforcement Actions

If an inspection identifies violations, the EPA Supplemental Environmental Projects Policy contains specific guidance on how environmental justice concerns can be addressed. If a SEP is to replace a fine, the Region should ensure that it is equitable when compared with similar actions in other communities.

Program Leadership and Evaluation

Training: Regional EJ Coordinators can be a valuable source of information to assist in integrating an awareness of environmental justice issues into any Regional enforcement training programs.

12. TRIBAL PROGRAM

EPA has the responsibility to directly implement its programs in Indian country, unless and until tribal governments have received that authority. Given that responsibility, the regions will continue to make sure that all the elements of the core enforcement and compliance assurance program are implemented in Indian country. During FY 2002/2003, the regions should continue to

increase their presence in Indian country, especially in the areas of compliance assistance, and enforcement, where warranted, against Federal, private and tribal facilities.

During FY 2002/2003, OECA will continue to implement its Strategic Plan for Indian Country, which will be finalized during FY 2001 based upon comments received from the Federally recognized tribal governments, state governments, and EPA regions and program offices on the draft strategy. The strategy, which will be issued under separate cover, identifies the activities that OECA and the regional enforcement programs will take to implement the enforcement and compliance assurance program over the next four years in order to protect human health and the environment in Indian country. The strategy will emphasize compliance assistance, compliance incentives, and enforcement to carry out these goals.

Here are the priority activities that individual OECA offices and the regions should be undertaking in FY 2002/2003 to implement the strategy:

Assessing Non-Compliance in Indian Country:

Complete and accurate information about the universe of regulated entities and their compliance status in Indian country is necessary for OECA and the regions to successfully protect the environment and enhance compliance. In FY 2002/2003, the regions should use the data developed through regional inspections and the AIEO baseline assessment survey to help identify and address potential areas of noncompliance.

Compliance Assistance

OECA's compliance assistance and capacity building efforts in Indian country are designed to

provide Federal facilities, non-tribally-owned or operated facilities, and tribal governments that own or manage regulated facilities with the information and support necessary to maintain compliance. Consistent with EPA's 1984 Indian Policy, and Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy, issued in January 2001, OECA and the regions will utilize compliance assistance as the initial means of resolving non-compliance and maintaining compliance on the part of tribally-owned or managed facilities, although the Agency will take enforcement actions when necessary if compliance assistance fails to correct violations at tribally-owned facilities in a timely fashion. To help implement this approach, during FY 2002/2003, the Regions will work with their tribal governments to assess both short-term and long-term tribal compliance and technical assistance training needs, using the Tribal Environmental Agreements (TEAs) or other process to develop the information.

During FY 2002/2003, OECA's National Enforcement Training Institute (NETI) will continue to provide classroom training and self-instruction training materials available to tribal law enforcement personnel. OECA will also continue work with the regions to address compliance monitoring issues in Indian country related to the potential authorization of tribal inspectors to receive Federal inspector credentials. Authorization of tribal inspectors is a discretionary function of the regions and is possible when an inspector has completed appropriate training designed to ensure Federal inspections are conducted properly under Federal environmental laws and in a manner designed to protect the inspector's health and safety. A guidance document entitled "Authorization Criteria for State and Tribal Inspectors," governing authorization is under final review by OECA.

Compliance Monitoring and Enforcement Actions:

Until tribal governments are delegated the authority to implement enforcement programs, EPA will take enforcement actions in Indian country under its direct implementation authority against Federal facilities, privately-owned and tribally-owned facilities where warranted. In FY 2001, OECA will work with the regions to compile a list of the facilities for which their Federally recognized tribal governments have requested them to take compliance monitoring activities (i.e., inspections, record reviews or enforcement). The regions will continue to inspect these facilities, which may be located on or near Indian country.

Program Leadership and Evaluation

The regions will be asked to manually report on FY 2002/2003 Tribal Performance Measures. Specific reporting requirements will be issued at a later date.

13. CRIMINAL ENFORCEMENT, FORENSICS, AND TRAINING CORE PROGRAM

Criminal enforcement serves the following purposes:

- addresses suspected or known illegal conduct which presents imminent and substantial endangerment to human health and/or the environment;
- prevents future environmental harm from occurring through referrals for court action and deters others from future similar illegal behavior; and

- levels the economic playing field.

Criminal Investigation Division

In order to achieve these purposes, each Program Office in each region will continue to coordinate and cooperate closely with the Criminal Investigation Division (CID) in the identification, investigation and prosecution of criminal violations of Federal environmental laws, with a particular emphasis on identifying criminal activity which victimizes environmental justice communities. In order to promote cooperation between each region and CID, the regions will:

- identify leads appropriate for criminal investigations and submit them for the regional screening process;
- assist CID in identifying, targeting and prosecuting persons who provide or maintain false data in areas within EPA's jurisdiction, such as false water monitoring reports, etc;
- provide technical support to CID investigations, providing in-house personnel as witnesses when necessary, and maintain legal and staff support to CID at levels sufficient to ensure the prompt prosecution of environmental crimes;
- Ensure that the January 12, 1994, Memorandum on the Exercise of Investigative Discretion document is distributed to all ORC attorneys and regional enforcement staff, and ensure that the content of this document is incorporated into training sessions on criminal enforcement which are periodically held for ORC attorneys and program enforcement staff;
- provide regional support for multi-media prosecutions of alleged criminal violations; and
- ensure that all environmental measurements or samples used to support EPA criminal investigations will be gathered, recorded and analyzed in a manner that complies with the EPA quality assurance system, and that all evidence collected will be handled and kept secure in accordance with EPA policies for the custodial management of evidence.

National Enforcement Investigations Center (NEIC)

Regions will request NEIC support through the planning process established by OCEFT. OCEFT is currently revising this process in coordination with ORE, the NEIC Division, and the regions.

National Enforcement Training Institute

Regions provide input on training needs and state priorities through the MOA process.

Training of Federal, state, local and tribal personnel will be conducted as approved in the annual NETI plan.

NETI monitors efforts to meet key training needs identified through the MOA process and incorporates them in the NETI plan.